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8 ARIZONA SUPERIOR COURT

9 YAVAPAI COUNTY

10 STATE OF ARIZONA,

11 Plaintiff,

12 vs.

13 STEVEN CARROLL DEMOCKER,

14 Defendant.

No. P1300CR20081339

15 } APPLICATION OF WESTERN  
16 } NEWS&INFO, INC. FOR LEAVE  
17 } TO INTERVENE FOR LIMITED  
18 } PURPOSE OF MOVING TO  
19 } UNSEAL COURT RECORDS  
20 } AND PROCEEDINGS

(Assigned to the Honorable  
Warren R. Darrow)

[Expedited Oral Argument  
Requested]

21 Pursuant to the First Amendment to the U.S. Constitution, Ariz. Const. art. 2,  
22 §§ 6 and 11, and Ariz. R. Sup. Ct. 123(c), Western News&Info, Inc., which publishes  
23 *The Daily Courier* ("WNI"), respectfully applies for leave to intervene for the limited  
24 purpose of moving to unseal the numerous court records and proceedings that have been  
25 closed to the public in this criminal case. This Application is supported by the following  
26 memorandum of law.

27 MEMORANDUM OF POINTS AND AUTHORITIES

28 Preliminary Statement

In the last month, WNI has seen a flurry of sealed court filings and closed  
proceedings that have denied the public full access to this high-profile murder case.

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1 These recent events follow numerous sealings and closures that have been ordered  
2 throughout the case, without public explanation. Under the First Amendment, however,  
3 the public has a strong right of access to the Court's records and proceedings. *E.g.*,  
4 *Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 13-14 (1986) ("*Press-Enterprise*  
5 *II*"). The Arizona Constitution likewise commands that "[j]ustice in all cases shall be  
6 administered openly," Ariz. Const. art. II, § 11, and the Arizona Supreme Court has  
7 declared that court filings "are presumed to be open to any member of the public for  
8 inspection." Ariz. R. Sup. Ct. 123(c)(1). Despite these mandates, many records in this  
9 case have simply been "purged from the [public] file." These closures violate the  
10 substantive and procedural requirements that must be met *before* any portion of a case  
11 file may be sealed from public view.

12 Specifically, the First Amendment requires that the Court provide public notice  
13 and make on-the-record findings, *before* closure, demonstrating that (1) closure serves a  
14 compelling interest, (2) the compelling interest would be harmed in the absence of  
15 closure, and (3) less restrictive alternatives are unavailable. *Phoenix Newspapers, Inc.*  
16 *v. District Court*, 156 F.3d 940, 949 (9th Cir. 1998). Arizona law requires that the Court  
17 make similar findings demonstrating why a particular record, or portion of it, should be  
18 sealed. *See* Ariz. R. Sup. Ct. 123(c)(1) and 123(d). WNI can find no indication in the  
19 record, however, that any of these requirements have been met to date in this case.

20 Accordingly, WNI respectfully requests that the Court unseal all closed or  
21 "purged" case filings and transcripts, or make the specific findings that would justify  
22 their closure. If the Court finds the continued closure of any record warranted, WNI  
23 asks that only those portions of the records that are truly confidential be redacted, and  
24 that the remainder be disclosed as required by law. Ariz. R. Sup. Ct. 123(f)(4).

#### 25 Factual Background

26 For nearly two years, WNI has reviewed the public record of this matter, attended  
27 the proceedings and reported to the public what has transpired. In that time, WNI has  
28 observed the Court limit public access to a great number of documents and a significant



1 portion of the proceedings. Indeed, the Court has sealed about 65 of the approximately  
2 400 case records posted online, and has closed at least some portion of 16 of the first 51  
3 days of trial. [Ex. 1 (Analysis of Online Docket)] In the last few weeks, the frequency  
4 of closures has increased substantially, and most of the records filed in the second half  
5 of September are sealed. [*Id.* (14 sealed of 27 documents)] Yet, WNI is unaware of *any*  
6 on-the-record explanation for this denial of public access.

7 Moreover, this murder prosecution case is of substantial public interest and  
8 concern. [Ex. 2 (Dennis Wagner, "Daughters' rights complicate murder case," *The*  
9 *Arizona Republic*, May 21, 2010)] The proceedings are well attended, and *The Daily*  
10 *Courier's* online articles about the case often receive numerous public comments. [Ex.  
11 3 (Linda Stein, "DeMocker's ex-girlfriend expected to testify for state," *The Daily*  
12 *Courier*, Aug. 3, 2010) (comments available at  
13 [http://prescottdailycourier.com/main.asp?SectionID=1&SubsectionID=1086&ArticleID](http://prescottdailycourier.com/main.asp?SectionID=1&SubsectionID=1086&ArticleID=83923)  
14 [=83923](http://prescottdailycourier.com/main.asp?SectionID=1&SubsectionID=1086&ArticleID=83923))] Despite this clear public interest, the "closed doors continue," and lawyers  
15 continue to argue the case out of public view. [Ex. 4 (Linda Stein, "DeMocker trial:  
16 Closed doors continue," *The Daily Courier*, Sept. 29, 2010)]

#### 17 Argument

18 I. WNI SHOULD BE GRANTED LEAVE TO INTERVENE FOR THE LIMITED  
19 PURPOSE OF MOVING TO UNSEAL COURT RECORDS AND  
PROCEEDINGS IN THIS CASE.

20 News organizations are routinely permitted to intervene in court proceedings to  
21 challenge orders that restrict public access to criminal records and proceedings. *E.g.*,  
22 *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501 (1984) ("*Press-Enterprise I*")  
23 (press allowed to object to closure of *voir dire* examinations in criminal trial); *Globe*  
24 *Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982) (upholding newspaper's right to  
25 challenge order closing a criminal trial from the general public); *KPNX Broad. Co. v.*  
26 *Superior Court*, 139 Ariz. 246, 254, 678 P.2d 431, 439 (1984) (order requiring court  
27 approval of juror sketches challenged by the press and vacated as an unconstitutional  
28 prior restraint); *Phoenix Newspapers, Inc. v. Superior Court*, 140 Ariz. 30, 32, 680 P.2d



1 166, 168 (Ct. App. 1983) (newspaper permitted to intervene and object to closure of  
2 criminal sentencing proceedings). Given WNI's strong and abiding interest in reporting  
3 news to the public and protecting its constitutional rights, intervention should be  
4 allowed.

5 II. THE STANDARDS FOR CLOSURE UNDER THE FIRST AMENDMENT  
6 AND ARIZONA LAW HAVE NOT BEEN MET.

7 A. The First Amendment Bars Sealing Criminal Records and Closing the  
8 Courtroom Absent Specific Factual Findings that Closure Is Essential to  
9 Protecting a Compelling Interest, Is Narrowly-Tailored to Serve that  
10 Interest and Is the Least Restrictive Alternative.

11 Under settled First Amendment law, the public is entitled to access judicial  
12 records and proceedings except where "specific, on the record findings are made  
13 demonstrating that 'closure is essential to preserve higher values and is narrowly  
14 tailored to serve that interest.'" *Press-Enterprise II*, 478 U.S. at 13-14 (quoting *Press-*  
15 *Enterprise I*, 464 U.S. at 510). "Consistent with the presumed right of access to court  
16 proceedings and documents under the first amendment as articulated in *Press-Enterprise*  
17 *I*, the party seeking access is entitled to a presumption of entitlement to disclosure."  
18 *Oregonian Publ'g Co. v. District Court*, 920 F.2d 1462, 1466-67 (9th Cir. 1990).

19 Specifically, sealing is permissible only if the Court finds that "(1) closure serves  
20 a compelling interest; (2) there is a substantial probability that, in the absence of closure,  
21 this compelling interest would be harmed; and (3) there are no alternatives to closure  
22 that would adequately protect the compelling interest." *Phoenix Newspapers, Inc.*, 156  
23 F.3d at 949. Procedurally, the court "must provide sufficient notice to the public and  
24 press to afford them the opportunity to object or offer alternatives" before the court seals  
25 any particular judicial records; "[i]f objections are made, a hearing on the objections  
26 must be held as soon as possible." *Id.* Moreover, the court must "make specific factual  
27 findings supporting its closure decision," and those findings must "satisfy all three  
28 substantive requirements for closure." *Id.* at 950. "The court must not base its decision  
on conclusory assertions alone, but must make specific factual findings." *Oregonian*  
*Publ'g Co.*, 920 F.2d at 1466.



1 As the U.S. Supreme Court has recognized, public scrutiny of criminal cases  
2 “enhances the quality and safeguards the integrity of the factfinding process, with  
3 benefits to both the defendant and to society as a whole,” “fosters an appearance of  
4 fairness, thereby heightening public respect for the judicial process,” and “permits the  
5 public to participate in and serve as a check upon the judicial process – an essential  
6 component in our structure of self-government.” *Globe Newspaper Co.*, 457 U.S. at  
7 606. For these reasons, the substantive and procedural requirements of the First  
8 Amendment “are not mere punctilios, to be observed when convenient.” *Phoenix*  
9 *Newspapers*, 156 F.3d at 951. Rather,

10 [P]roviding the public notice and an opportunity to be heard  
11 ensures that the trial court will have a true opportunity to  
12 weigh the legitimate concerns of all those affected by a  
13 closure decision. Similarly, entry of specific findings allows  
14 fair assessment of the trial judge’s reasoning by the public  
15 and the appellate courts, enhancing trust in the judicial  
16 process and minimizing fear that justice is being  
17 administered clandestinely.

18 *Id.* As discussed below, the sealing of court records and proceedings in this case has  
19 violated these First Amendment standards.

20 B. Arizona Law Mandates Open Records, Unless the Proponent of Closure  
21 Carries the Heavy Burden of Justifying Sealing.

22 The Arizona Supreme Court has likewise declared that all papers filed with state  
23 courts are presumptively public:

24 Historically, this state has always favored open government  
25 and an informed citizenry. In the tradition, the records in all  
26 courts and administrative offices of the Judicial Department  
27 of the State of Arizona are presumed to be open to any  
28 member of the public for inspection or to obtain copies....

29 Ariz. R. Sup. Ct. 123(c)(1). *See also* Ariz. R. Sup. Ct. 123(d) (“All case records are  
30 open to the public except as may be closed by law, or as provided in this rule.”); Ariz.  
31 Sup. Ct. Admin. Order 95-35, at 1 (“This Court has long been cognizant of the value of  
32 an informed public as a restraint upon government, and of the value of the press as a  
33 vital source of public information.... A policy of open court records is desirable because  
34 it promotes accountability of the courts to an informed public.”). The Arizona Supreme



1 Court has held repeatedly that Arizona law “provide[s] a broad right of inspection to the  
2 public” and “evinces a clear policy favoring disclosure” of public records, such as the  
3 judicial records at issue here. *Carlson v. Pima County*, 141 Ariz. 487, 490, 687 P.2d  
4 1242, 1245 (1984) (construing A.R.S. § 39-121 *et seq.* (the “Arizona Public Records  
5 Law”)).

6 A party seeking to overcome the strong presumption in favor of access has the  
7 burden of specifically demonstrating how disclosure of each record at issue would harm  
8 interests of privacy, confidentiality or “the best interests of the state.” Ariz. R. Sup. Ct.  
9 123(c)(1). Courts applying the analogous standards of the Arizona Public Records Law  
10 have recognized that the proponent of closure has the heavy burden of proving “the  
11 probability that *specific, material harm will result from disclosure, thus justifying an*  
12 *exception to the usual rule of full disclosure.*” *Mitchell v. Superior Court*, 142 Ariz.  
13 332, 335, 690 P.2d 51, 54 (1984) (emphasis added). This burden cannot be met by  
14 speculating about harms that might occur, or “argu[ing] in global generalities of the  
15 possible harm that might result from the release.” *Cox Arizona Publ’ns, Inc. v. Collins*,  
16 175 Ariz. 11, 14, 852 P.2d 1194, 1198 (1993). Rather, the closure proponent must  
17 identify specific harms associated with the release of specific documents. *Star Publ’g*  
18 *Co. v. Pima County Attorney’s Office*, 181 Ariz. 432, 434, 891 P.2d 899, 901 (Ct. App.  
19 1993) (“public records are presumed open to the public for inspection unless the public  
20 official can demonstrate *a factual basis why a particular record ought not be*  
21 *disclosed*”) (emphasis added).

22 On closing any judicial record, “the court shall state the reason for the action,  
23 including a reference to any statute, case, rule or administrative order relied upon.”  
24 Ariz. R. Sup. Ct. 123(d). If any closure is warranted, only those records or portions  
25 thereof that are truly confidential may be redacted, and the remainder must be disclosed.  
26 *See, e.g.,* Ariz. R. Sup. Ct. 123(f)(4)(B)(i) (“If access to any record is denied for any  
27 reason, the custodian shall explore in good faith with the applicant alternatives...,  
28 including redaction of confidential information.”).



1 C. The Substantive and Procedural Requirements for Closure Have Not Been  
2 Satisfied.

3 The sealing of the records and proceedings in this case violates all of the  
4 foregoing standards. First, no compelling interest has been identified that would justify  
5 the regular and systematic closures that have occurred. While WNI might assume that  
6 one of the parties has, at some point, offered a reason for the sealings, none of the  
7 publicly available documents offers any explanation. Instead, the public can only guess  
8 as to why so many records have been “purged from the file” and why courtroom access  
9 has been routinely denied. In any event, whatever interest is at stake, it must be  
10 significant – “mere embarrassment” is insufficient. *Walsh v. City and County of San*  
11 *Francisco*, 887 F. Supp. 1293, 1297 (N.D. Cal. 1995). Indeed, if anything less than a  
12 *compelling* interest were enough to close criminal case files, then such files could be  
13 closed routinely – a result that would turn the public’s right of access on its head.

14 Second, there has been no specific, on-the-record findings that demonstrate how  
15 disclosure of any specific record, or portion thereof, would cause harm to a compelling  
16 interest. To be clear, a party cannot merely assert a risk of harm without demonstrating  
17 how the release of a specific record, or portion of it, from the Court’s file would cause  
18 that harm. *See, e.g., Phoenix Newspapers*, 156 F.3d at 949-50; *Star Publ’g*, 191 Ariz. at  
19 434, 891 P.3d at 901. As the record in this case stands now, the public has no way of  
20 knowing whether this showing has in fact been made.

21 Third, neither party has publicly established that any asserted harm could not be  
22 averted by using less intrusive measures. The First Amendment and Arizona law  
23 require the use of the least restrictive alternative available, such as the redaction of only  
24 the information that would truly cause harm if released. *See, e.g., Phoenix Newspapers*,  
25 156 F.3d at 947-50. Even if some information within the sealed records could be  
26 properly withheld from public view, there is no evidence that lesser measures have been  
27 considered. Rather, numerous records have been “purged from the file” in their entirety.  
28



1 Accordingly, the Court should review the sealed records and proceedings  
2 pursuant to the procedural and substantive requirements prescribed by the First  
3 Amendment and Arizona law. If a specific threat of harm from disclosure exists, the  
4 Court must redact only as much information as necessary to advance the State's interest  
5 in avoiding that harm, and should release the remainder. If any redactions are permitted,  
6 the Court must set forth specific, on-the-record findings that justify any closure. Ariz.  
7 R. Sup. Ct. 123(d). Finally, any redactions must be lifted as soon as the necessity for  
8 closure no longer exists. *Phoenix Newspapers*, 156 F.3d at 947-48.

9 Conclusion

10 For the foregoing reasons, WNI's Application should be granted and the closed  
11 records, transcripts and proceedings in this matter unsealed.

12  
13 RESPECTFULLY SUBMITTED this 5<sup>th</sup> day of October, 2010.

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1 ORIGINAL of the foregoing hand delivered  
for filing this 5th day of October, 2010 to:

2 Clerk of the Court  
Yavapai County Superior Court  
3 120 South Cortez St.  
Prescott, Arizona 86303  
4

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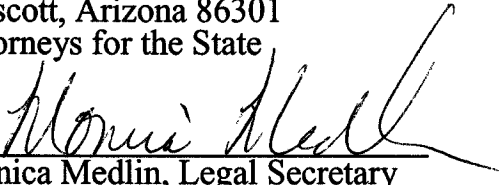
6 Hon. Warren R. Darrow  
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07-16-2010 Motion to Dismiss.doc	7/16/2010	✓
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## Daughters' rights complicate murder case

They believe father, accused of bludgeoning mother, is innocent

by Dennis Wagner - May. 21, 2010 12:00 AM  
The Arizona Republic

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PRESCOTT -

There is a reason Katie and Charlotte Democker want the man accused of murdering their mother out of jail.

The defendant is their father, Steven Democker, who is now on trial in a case that could lead to the death penalty if the wealthy investment adviser is convicted.

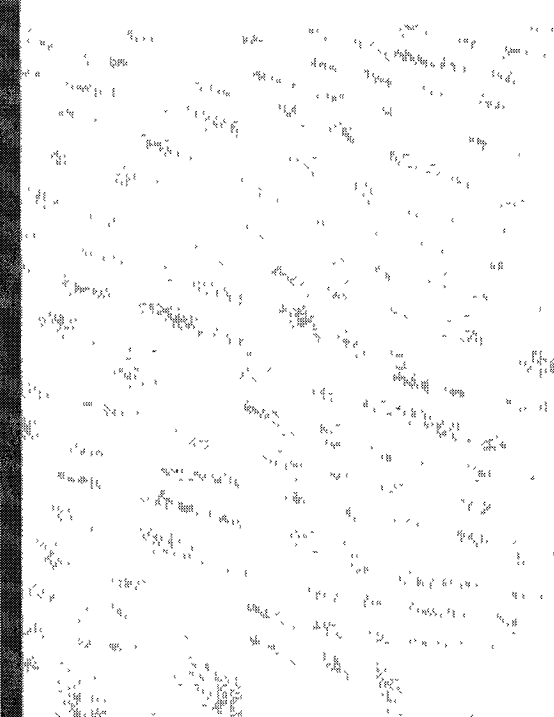
Yavapai County sheriff's deputies gathered enough circumstantial evidence to file charges in a murder mystery that has horrified, captivated and divided Prescott from day one. They contend that Steven savagely beat his ex-wife, artist Carol Kennedy, in her Williamson Valley home nearly two years ago. They say Steven, 56, searched the Internet for information on how to disguise a homicide and bought books on how to disappear as a fugitive afterward.

"The circumstantial evidence against defendant is overwhelming," deputies say in court papers.

The sisters say their dad is not guilty - a position that puts them at odds with prosecutors in a legal battle over their rights as crime victims.

"My father, my dad, is the most compassionate, supportive, brilliant man I know," Charlotte, now 18, wrote in a prepared statement to the judge, provided to *The Arizona Republic* by her attorney. "If there is one thing I just know, it is my father is not capable of what he is accused of."

Under the Victim's Bill of Rights, a constitutional amendment adopted by Arizona voters in 1990, the young women are entitled to confer with prosecutors about decisions in the case. But, because the sisters are aligned with the defense, the Yavapai County Attorney's Office pressed them to renounce





their rights, then conducted communications with them.

Chris Dupont, the sisters' attorney, said they want no publicity but have been thrust into a constitutional controversy. "This is not a story about them having to choose sides," Dupont added. "They loved their mother. They love their father. And they believe he is innocent."

Steven Democker's trial is now in its third week of jury selection in Prescott. Testimony is expected to last three months, with more than 100 witnesses scheduled.

None of them will place Steven at the scene. Neither his fingerprints nor DNA was found. The murder weapon is missing.

Still, deputies gathered reams of information and statements which, they say, prove that he used a Callaway No. 7 Big Bertha III golf club to end years of financial feuding with Kennedy, whom he had recently divorced.

Defense attorneys Larry Hammond and John Sears answer in court papers that Steven had no financial motive to kill his ex-wife. They say police botched the investigation. And they point out that DNA from three unidentified men, not Steven, was found beneath the victim's fingernails.

## Grim death of Carol Kennedy

Kennedy, a psychotherapist, painter and former Prescott College faculty member, lived alone in a house on North Bridle Path, in an oak-dotted rural neighborhood a few miles north of Prescott.

Court records describe the final day of her life:

On July 2, 2008, she completed an evening jog through the hills and sat down for a phone call with her mother in Nashville.

Ruth Kennedy told detectives her daughter mentioned Steven's failure to pay alimony and discussed plans to see a lawyer. Twenty minutes into the conversation, at 7:59 p.m., there was an exclamation - "Oh, no!" - and the line went dead.

Ruth tried calling back but got no answer. She phoned other relatives. She dialed Steven, leaving a message. Finally, she contacted the Sheriff's Office.

A deputy arrived at the house and pointed his flashlight through a window, illuminating Carol Kennedy's body on the floor in a pool of blood. Someone had toppled a bookcase and moved a ladder to make it appear she had fallen.

The autopsy found Kennedy's skull was fractured in 50 or more places by at least seven blows, consistent with the strike of a golf club.

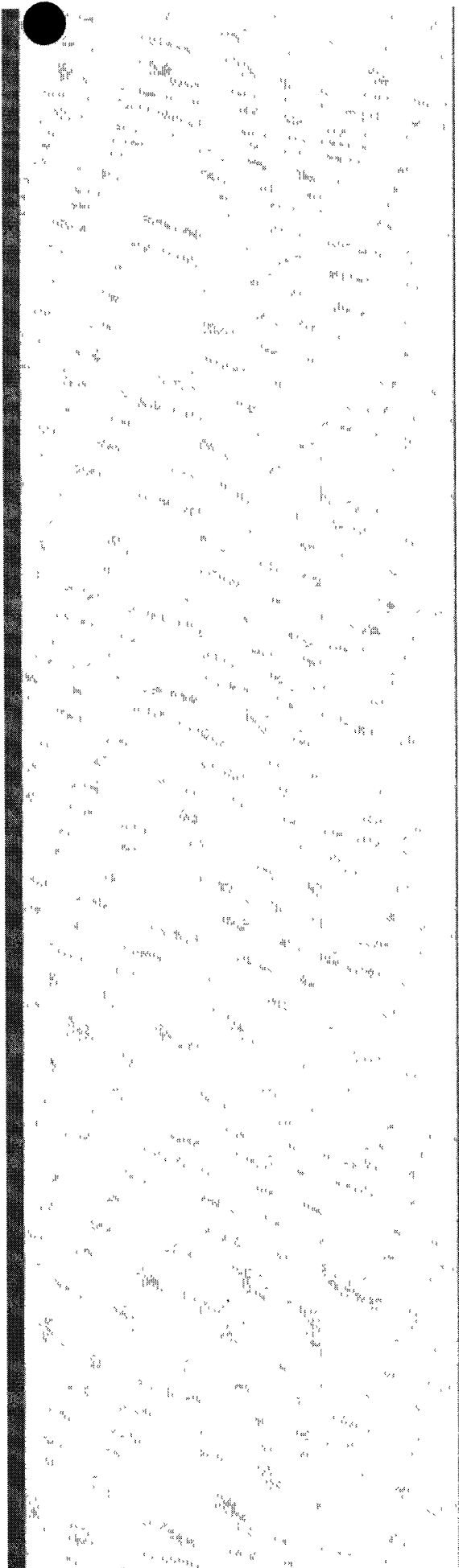
"The severity of the injuries suggests her attacker was in a rage," a search-warrant affidavit notes. "Rage often suggests a relationship between the attacker and the victim."

Moments after the body was found, Charlotte, then 16, arrived at the house with her boyfriend. Charlotte was on a cellphone with her dad when deputies advised that her mother was dead. She dropped the phone.

A deputy began speaking with Steven, who explained that family members had asked him to check on his ex-wife, but he sent Charlotte because he didn't feel comfortable doing it.

Steven then asked about his daughter: "She hasn't . . . what kind of state is Carol in? She hasn't seen Carol, has she?"

After driving to the house, Steven volunteered that he and Kennedy had gone through a





difficult divorce. He was paying \$6,000 a month to his ex-wife, plus most of a 401(k) valued at \$190,000. They had exchanged text messages earlier in the day, disputing the finances.

Still, Steven said he and his wife had chatted amicably over coffee a few days earlier.

"We were talking about starting to date again," he said. "I loved Carol."

Asked where he'd been, Steven told deputies he had gotten a flat tire while mountain biking on dirt trails, starting 1 1/2 miles from his wife's house, at 6:30 p.m., ending 10 miles away and three hours later.

As the interview continued, Steven wondered aloud: "So, I'm a suspect?"

At Kennedy's house, deputies noticed loosened lightbulbs in the laundry room. They took impressions of footprints near the house leading to bicycle tracks that stopped about 100 yards away.

At the same time, Yavapai County Medical Examiner Philip Keen was examining the body. He observed indentations in Kennedy's head that might have been left by a golf club.

With that information, and while Steven was still being questioned, investigators returned to his house. Pictures taken in his garage during the first visit, hours earlier, showed a golf-club cover on a shelf in the garage. When they returned, however, the cover was gone.

The investigation dragged on for weeks. Detectives found that Steven was the beneficiary of Kennedy's life-insurance policies, worth \$750,000. They contacted experts who said tracks at the scene were similar to treads on Steven's bike tires, but not a conclusive match. They learned that the shoe prints were of the same type as a pair Steven once owned.

On Oct. 23, 2008, after nearly three months, detectives arrested Steven Democker in Phoenix at his UBS Financial Services office, where he worked as a financial adviser, taking home \$300,000 to \$500,000 a year. Steven, who had no history of violence, asked how deputies could believe that he "just suddenly erupted in a blind rage after 5 1/2 years of relatively amicable separation."

Deputies asked about the missing golf-club cover. Steven said he did not remove the item from his garage. He said he found it one day later, in a friend's car, and gave it to his attorney. Without elaborating, he added, "There is an explanation."

During the arrest, detectives told Steven they knew he'd applied for a replacement passport by claiming the original was lost, when in fact he had surrendered it to authorities. They asked him to explain his purchase of books with titles such as "How To Disappear Until You Want To Be Found." They also wondered why his motorcycle was packed for travel, with a map of Mexico.

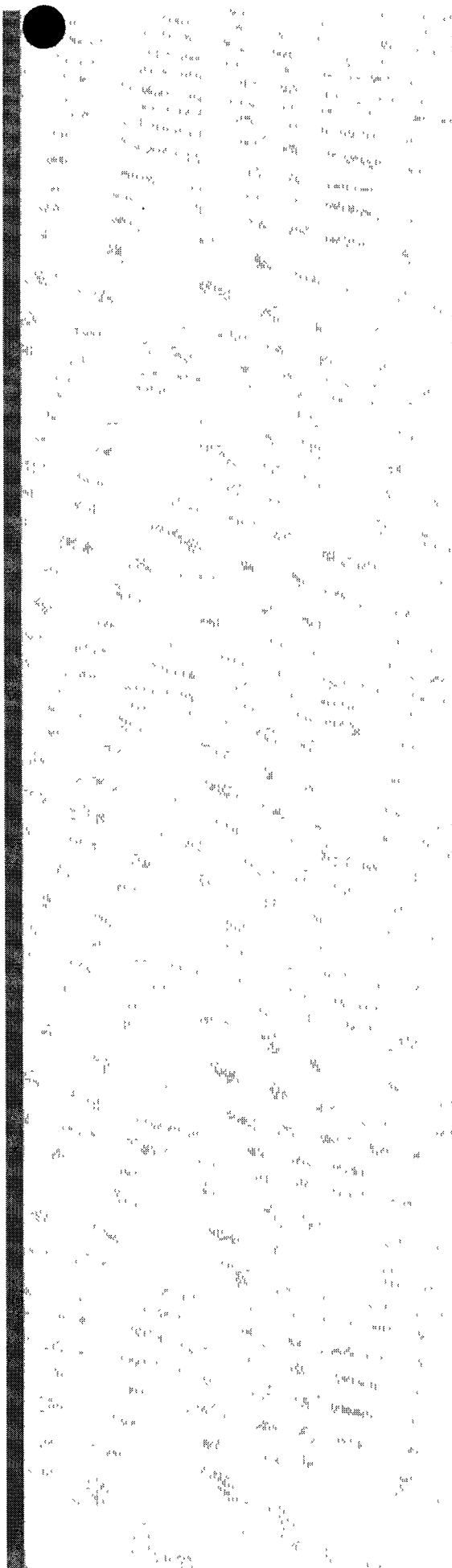
Steven said he had no alibi and feared arrest, so, in a time of panic, he made plans to abscond. "It was stupid, fear-based stuff," he said.

Defense lawyers, in turn, accuse police and prosecutors of blindly focusing on the ex-husband and not looking at Kennedy's tenant, whom they say was involved with drug trafficking.

## Opposite sides of the courtroom

During jury selection last week in court, Ruth Kennedy listened attentively beside a Yavapai County victim's advocate, awaiting the day she will testify against her former son-in-law.

As the hearing proceeded, Charlotte slipped into the courtroom. Spotting her





grandmother, the teenager flashed a smile and gave a tender hug.

Later, Ruth returned to a seat reserved for victims. Charlotte followed, walking past her grandmother to a bench behind the defense table, backing her dad.

Under Arizona law, the Democker sisters are guaranteed treatment with dignity and a right to confer with prosecutors. According to court records, however, the daughters were blocked from contact with their father for weeks after his arrest and pressured to renounce their rights as victims. Prosecutors declined to comment for this story.

Dupont, the lawyer for the daughters, said state lawyers feared they might be a conduit of information to the defense. As recently as April, he complained to the court that his clients' rights were being violated and that prosecutors "tried to punish the girls for taking a contrary position."

Keli Luther, senior counsel for the non-profit Arizona Voice for Crime Victims, said there are occasional cases where children of defendants are at odds with the state's attorney. Unlike other witnesses, victims are entitled to attend court proceedings, receive police reports and request information from prosecutors.

"It makes it more challenging," Luther said. "But they still have a constitutional right to protect, whether it's awkward or not."

Richard Lougee Jr., a Tucson attorney, said prosecutors take advantage of the law when victims are gung-ho for a conviction.

"But when the victim backs off and doesn't want blood," he added, "very often a prosecutor will simply cut them out of the process."

Dupont said Charlotte Democker finally was granted a private audience last month with Yavapai County Attorney Sheila Polk, who listened as Charlotte's representatives asked for dismissal of the death-penalty petition. When the session ended, Dupont said, Polk made a quip about the length of the presentation. "That was it," Dupont said. "Her response to the whole thing was to make a joke about the death penalty, right in front of Charlotte's face."

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# The Daily Courier

Tuesday, August 03, 2010

## DeMocker's ex-girlfriend expected to testify for state

By Linda Stein

The Daily Courier

Tuesday, August 03, 2010

A murder trial that's had more ups and downs than a roller coaster screeched to a halt again Tuesday after lawyers met with Superior Court Judge Warren R. Darrow.

The trial for Prescott stockbroker Steven DeMocker had restarted July 21 after a five-week break because Superior Court Judge Thomas B. Lindberg collapsed in his chambers on June 17 and was rushed to the hospital. Lindberg, who subsequently had surgery for a brain tumor, is recovering at home and reportedly doing well.

Authorities charged DeMocker, 56, with murder in the brutal, bludgeoning death of his former wife, Carol Kennedy. Two detectives testified that DeMocker sparked their suspicions when he asked if he was a suspect after he drove out to the Williamson Valley house the night of Kennedy's death.

DeMocker, who lived in a Hassayampa Country Club condominium, told investigators that he'd been riding his mountain bike on trails along Granite Mountain on July 2, 2008, during the time his ex-wife died. However, no one saw him take that ride.

After a closed-door conference with the lawyers Tuesday, Judge Darrow told the jury that the trial was canceled for the week and scheduled to resume Aug. 11. Darrow did not disclose the reason for the postponement, but ascribed it to legal matters.

Darrow also reminded the jury not to discuss the case or read or listen to accounts in the news media.

After the jury left, defense lawyer Larry Hammond asked Darrow to tell the prosecution to expedite materials to be turned over to the defense. Darrow gave prosecutors until 5 p.m. to do that.

Meanwhile, The Courier has learned that Renee Girard, who was dating DeMocker at the time of the murder, recently wrote a letter to his family saying that she was breaking up with him. Prosecutors subsequently obtained a copy of that letter.

Previously, Deputy County Attorney Joseph C. Butner III said that Girard will testify for the state under a grant of immunity. Butner expects her to tell the jury about conversations that she had with DeMocker while he's been in custody and about a packed getaway bag that he hid near the eighth hole of the golf course, within walking distance of his house. At a pretrial hearing in April, Butner said that DeMocker and Girard spoke to each other in "a secret code" after his arrest in October 2008.

Butner alleges that DeMocker had a financial motive to commit the murder, since an out-of-court divorce settlement required him to pay \$6,000 a month to Kennedy. Also, at the time of her death, Kennedy and DeMocker disagreed about an \$8,000 portion of a retirement account. Conversely, defense lawyers argue that DeMocker had a good income as a stockbroker and could meet his obligations to his former spouse. Both sides plan to call financial experts to buttress their contentions.

Butner also will call on experts in bicycle and foot tracks to try to link DeMocker to the vicinity of Kennedy's house.



Detectives testified that they found bike tracks at the entrance of the Goshandra trail that leads to the rear of Kennedy's house. They also said that they tracked footprints to her backyard. Defense lawyers dispute the significance of those tracks and point to a lack of DNA evidence to show their client was at the crime scene. Instead, forensic scientists found DNA from three unknown men beneath a fingernail.

The murder weapon, which authorities believe was a Callaway Big Bertha golf club, has never been found.

DeMocker had faced the death penalty until Lindberg dismissed two of three death penalty aggravators in response to untimely disclosure of evidence by the prosecution. Later, prosecutors dropped the remaining aggravator. DeMocker could be sentenced to life in prison if convicted. He remains in custody in lieu of \$1 million bond.

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# The Daily Courier

Wednesday, September 29, 2010

## DeMocker trial: Closed doors continue; defendant will appear on new charges

By Linda Stein

The Daily Courier

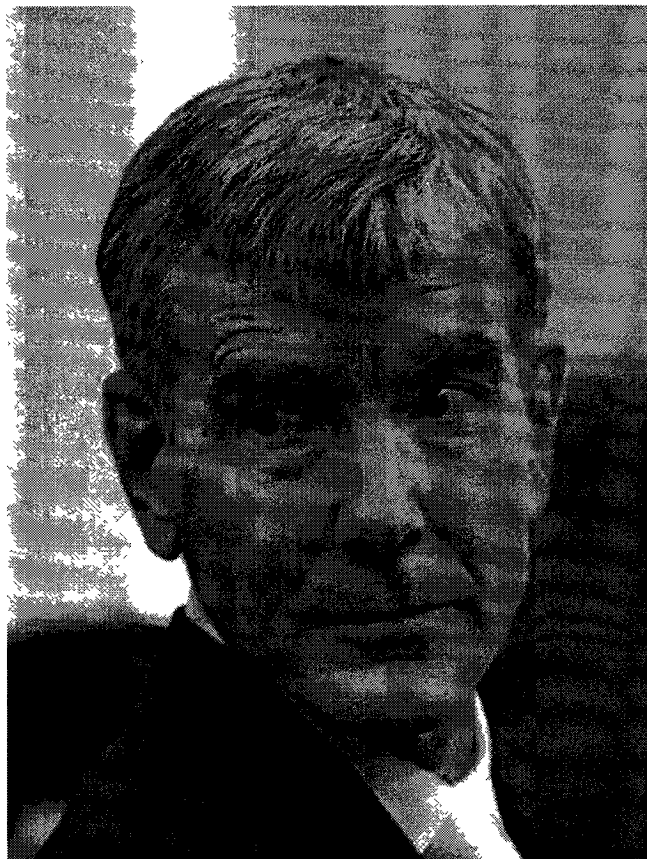
Wednesday, September 29, 2010

PRESCOTT - The murder trial for Steven DeMocker, a former Prescott stockbroker, met another delay Wednesday as lawyers argued behind closed doors. Jurors were told to return to the courthouse Friday morning.

DeMocker, 56, charged with murder in the July 2, 2008, brutal beating death of his ex-wife, Carol Kennedy, also faces new fraud and forgery charges related to an anonymous e-mail that his lawyers had wanted to admit as evidence in the trial. A witness told the Yavapai County Attorney's Office that DeMocker allegedly wrote the e-mail - an account of hit men from a Phoenix drug ring carrying out the murder - himself.

DeMocker, who was assigned a public defender for the fraud charges instead of the high-powered defense team representing him at the murder trial, is expected to be in court today for an early disposition hearing at the courthouse in Camp Verde.

Meanwhile, he remains in custody in lieu of \$2 million bond.



Steven DeMocker

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